REMARKS

I. Rejections – 35 USC § 103

Claims 1-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al. (US Pat. 5,456,692, previously cited, "Smith") in combination with Piosenka et al. (US Pat. 4,993,068, previously cited, "Piosenka") and Seeley (US Pat. 6,615,191 B1, newly cited, "Seeley").

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al. (US Pat. 5,456,692, "Smith"), Piosenka et al. (US Pat. 4,993,068, "Piosenka") and Seeley (US Pat. 6,615,191 B1, "Seeley"), as applied to claim 8 above, in further combination with Clayden (US Pat. 5,787,185, newly cited, "Clayden").

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al. (US Pat. 5,456,692, "Smith"), Piosenka et al. (US Pat. 4,993,068, "Piosenka") and Seeley (US Pat. 6,615,191 B1, "Seeley"), as applied to claim 13 above, in further combination with Freed (US Pat. 6,132,363, newly cited, "Freed").

Claim 1 of the present invention is directed to a user recognition system that includes an analyzer unit determining whether a potential user is authorized to have access to the data communications of an instrument in data communication with an implantable medical device, wherein, in response to the potential user not being authorized to have access, the analyzer unit determines whether the potential user is requesting access associated with an override function and, in response to the access request being associated with the overdrive function, granting a level of access associated with a predetermined authorization level.

Independent claim 8 of the present invention is directed to a user authentication system that includes means for analyzing and comparing at least one biometric trait with coded data to grant or deny access, wherein, in response to a potential user being denied access, the analyzing means determines whether the potential user is requesting access associated with an override

function and, in response to the access request being associated with the overdrive function, granting a level of access associated with a predetermined authorization level.

Independent claim 13 of the present invention is directed to a method for a biometric-based identification of a user to provide authorized access to operational hardware, software and patient medical data contained in instruments and implanted medical devices biometric-based user identification that includes determining, in response to a match not being confirmed between said at least one biometric trait and the stored coded data, whether the potential user is requesting access associated with an override function and, in response to the access request being associated with the overdrive function, granting a level of access associated with a predetermined authorization level.

As stated by the Examiner, Smith and Piosenka do not teach the determining whether the potential user is requesting access associated with an overdrive function. As further pointed out by the Examiner, col. 7, lines 37-54 of Seeley teaches a match detector operatively connected to a storage that "can include one or more works, and the different works may be equipped with different access levels (e.g., feature-rich and economy versions) . . . [that] can be registered for in advance, or they may be registered to a customer, and billed for, as he or she accesses them, once he or she has authenticated his or her identity using the biometric interface." (emphasis added).

Therefore, Seeley teaches an authorization level once identity is authorized. None of the referenced documents, alone or in combination teach or suggest an analyzer unit or an analyzing means that determines, in response to the potential user not being authorized to have access, whether the potential user is requesting access associated with an override function and, in response to the access request being associated with the overdrive function, granting a level of access associated with a predetermined authorization level, as set forth in independent claims 1 and 8, respectively, or determining, in response to a match not being confirmed between said at least one biometric trait and the

stored coded data, whether the potential user is requesting access associated with an override function and, in response to the access request being associated with the overdrive function, granting a level of access associated with a predetermined authorization level, as set forth in independent claim 13 of the present invention. Accordingly, withdrawal of the rejections is respectfully requested.

II. Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this Amendment, the Examiner is requested to telephone the undersigned attorney to attend to those matters.

Respectfully submitted,

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Date

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